



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Parts 9, 63, 80, 85, 122, 123, and 412

[EPA-HQ-OW-2012-0813, FRL-9764-8]

Section 610 Review of NPDES Permit Regulation and Effluent Limitations Guidelines

Standards for Concentrated Animal Feeding Operations (CAFOs); Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On October 31, 2012 the EPA published a request for comments on a Regulatory Flexibility Act section 610 review titled, Section 610 Review of NPDES Permit Regulation and Effluent Limitations Guidelines Standards for Concentrated Animal Feeding Operations (CAFOs). As initially published in the **Federal Register**, written comments were to be submitted to the EPA on or before December 31, 2012 (a 60-day public comment period). Since publication, the EPA has received a request for additional time to submit comments. Therefore, the EPA is extending the public comment period for 60 days until March 1, 2013.

DATES: The public comment period for the review published October 31, 2012 (77 FR 65840) is being extended for 60 days to March 1, 2013 in order to provide the public additional time to submit comments and supporting information.

ADDRESSES:

Comments: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2012-0813, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *Email:* rfa-sbrefa@epa.gov, Attention Docket ID No. EPA-HQ-OW-2012-0813.

- *Fax:* (202) 566 – 9744
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, Attention Docket ID No. EPA–HQ–OW–2012–0813, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, DC, Attention Docket ID No. EPA–HQ–OW–2012–0813. Such deliveries are accepted only during the Docket Center’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2012–0813. The EPA's policy is that all comments received will be included in the public docket without change and could be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov website is an “anonymous access” system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, the EPA might not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For

additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

FOR FURTHER INFORMATION CONTACT: For additional information contact, Hema Subramanian, Office of Wastewater Management (4203M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-5041; fax number: (202) 564-6384; email address: subramanian.hema@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

Section 610 of the Regulatory Flexibility Act requires that an agency review, within 10 years of promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities (SISNOSE). The EPA undertakes section 610 reviews to decide whether the agency should continue a rule unchanged, amend it, or withdraw it. We encourage small entities to provide comments on the need to change these rules, and in

particular, how the rules could be made clearer, more effective, or if there is need to remove conflicting or overlapping requirements with other Federal or State regulations.

The EPA promulgated revised regulations for CAFOs on February 12, 2003 (68 FR 7175). The “2003 CAFO Rule” expanded the number of operations covered by the CAFO regulations and included requirements to address the land application of manure from CAFOs. The 2003 CAFO Rule required all CAFOs to seek NPDES permit coverage. The EPA developed a Final Regulatory Flexibility Analysis (FRFA) for the 2003 CAFO Rule. In the 2003 CAFO Rule, the EPA took several steps to minimize its impacts on small businesses, including regulatory revisions designed to focus on the largest producers, eliminating the “mixed” animal calculation for operations with more than a single animal type for determining which AFOs are CAFOs, raising the duck threshold for dry manure handling duck operations, and adopting a dry-litter chicken threshold higher than proposed.

Subsequently, a series of court decisions based on legal challenges to the rulemaking have limited the requirement for NPDES permit coverage specifically to CAFOs that discharge. In response to these court decisions, the EPA made revisions to the CAFO regulations in 2008 (73 FR 70418) and 2012 (77 FR 44494). In promulgating the 2008 regulatory revision, the EPA certified that the 2008 rule would not have a significant adverse economic impact on a substantial number of small entities. In promulgating the 2012 regulatory revision, the 2012 rule was not subject to the RFA because the RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute, and the 2012 rule was not subject to notice and comment requirements. Both rules reduced the potential impact of the EPA’s CAFO regulations on small entities by reducing the universe of CAFOs that must apply for NPDES permits. Although the EPA has made these subsequent

revisions to the CAFO regulations, the scope of this 610 review is limited to the impacts on small entities of the 2003 CAFO Rule as amended.

II. Extension of Comment Period for the Section 610 Review of the 2003 CAFO Rule

The EPA is extending the deadline for submitting comments on the section 610 review of the CAFO Rule to March 1, 2013. The original deadline for comments, based on a 60-day comment period, was December 31, 2012. The EPA's decision responds to a request to extend the comment deadline. The EPA believes that this 60-day extension will assist in providing an adequate amount of additional time for the public to review the action and to provide written comments.

Dated: December 19, 2012

Alexander Cristofaro,
Director, Office of Regulatory Policy and Management

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